

Sunset Public Hearing Questions for
Tennessee Tobacco Farmers Certifying Board
Created by Section 43-36-102, *Tennessee Code Annotated*
(Sunset termination June 2012)

1. Provide a brief introduction to the Tennessee Tobacco Farmers Certifying Board, including information about its purpose, statutory duties, staff and administrative attachment.

The Tennessee Tobacco Farmers Certifying Board was created in 1999 by the Tennessee General Assembly (TCA 43-36-101) to develop a plan for distributing Tennessee's share of the National Tobacco Growers Settlement Trust to the state's burley tobacco growers and quota owners. The Trust is an agreement among major tobacco manufacturers and 14 tobacco-producing states to help compensate tobacco farmers for market losses as a result of the Master Settlement Agreement. It is privately funded by tobacco manufacturers, and no public funds are involved. However, the Trust required each state to establish a governing board to oversee the administration of these private funds. According to TCA 43-36-110, the board is to remain in existence until June 30, 2014, or until the termination of the Trust, whichever occurs first.

2. Provide a list of current board members and describe how membership complies with Sections 43-36-103, 104 and 105, *Tennessee Code Annotated*. Who appoints members? Are there any vacancies on the board? If so, what steps have been taken to fill the vacancies?

The 14-member board consists of the governor, commissioner of agriculture, state attorney general, two legislative members, two congressional members, three to six tobacco farmers and one distinguished citizen appointed by the governor. The administration is in the process of naming new members. Current members include:

*Gov. Bill Haslam, Chairman
Commissioner Julius Johnson, Vice-Chairman
State Attorney General and Reporter Robert Cooper
Three to six farmers/quota owners – TBD
Distinguished citizen – TBD
State Sen. Steve Southerland, Morristown
State Rep. Terri Lynn Weaver, Lancaster
Congressional Delegates – TBD*

3. Does membership include a member who is sixty years of age or older? A member who is a racial minority? A member who is female?

The membership does include members sixty years of age and older and one female member. There are currently no racial minority members.

4. What per diem or travel reimbursement do members receive? How much was paid to board members during fiscal years 2010 and 2011?

Members are not paid per diem but are reimbursed for travel expenses at standard state rates for board and commission members. Because the board has been inactive since May 2009, there were no travel expenses for FY 10 or FY 11.

5. What were the board's revenues (by source) and expenditures (by object) for fiscal years 2010 and 2011?

The board is only responsible for approving Tennessee's plan for distributing Trust funds in the state and certifying eligible Tennessee tobacco growers and quota owners. No Trust funds are received or paid by the state. Payments are made directly to certified individuals from the Trust. Therefore, the board never generates revenue and administrative expenses incurred by the state are reimbursed by the Trust. Because the board has been inactive since May 2009, there were no administrative costs in FY 10 or FY 11.

6. How many times did the board meet in fiscal years 2010 and 2011, and how many members were present at each meeting?

Federal legislation, commonly referred to as the tobacco buyout, passed in October 2004. As a result, tobacco manufacturers were no longer obligated to fund the trust under terms of the agreement. The last payout to eligible Tennessee growers and quota owners was in FY 06. After remaining administrative expenses were paid, the board last met in October 2008 to designate residuals funds in the amount of \$165,700 to the Land Trust of Tennessee to help with the preservation of working farms. A quorum was present at the last meeting. Until October 2004, the board generally met a minimum of twice yearly. The board should remain in place until its termination in 2014 in the event that federal law changes or the agreement is modified, requiring the board reactivation.

7. Is the board subject to Sunshine law requirements (Section 8-44-101 et seq., *Tennessee Code Annotated*) for public notice of meetings, prompt and full recording of minutes and public access to minutes? If so, what procedures does the board have for informing the public of its meetings, who keeps the official minutes of board meetings and what steps are taken to make the minutes available to the public?

The board is subject to the Sunshine law and public notices of meetings are distributed to media and posted on the board's Web site for public viewing. As the state Attorney General serves as board secretary, the Attorney General's Office records and maintains official minutes of board meetings and actions.

8. What were the major accomplishments of the board during fiscal years 2010 and 2011?

Over a six year period, the board was responsible for the equitable distribution of more than \$170 million to beneficiaries of the Trust in Tennessee -- farm families who were affected by the loss of tobacco markets. The board has been inactive since May 2009.

9. What reports does the board prepare on its operations, activities and accomplishments and who receives the reports?

In addition to the official minutes maintained by the state Attorney General's Office, the board routinely issued press releases on its actions and posted updates on its website. Updates on board activities were also published regularly in the Department of Agriculture's annual report.

10. Has the board made annual certification to the National Tobacco Trust of the list of persons who qualify for annual payments from the National Tobacco Farmers Trust? How many people have been certified to date?

Yes. For the years that the Trust was fully funded, the board made annual certification to the Trustee a list of individuals eligible to receive a payment. Approximately 47,000 individuals were certified by the board in FY 06, the last year that funds were distributed.

11. Does the board have any policies in place to address potential conflicts of interest by board members, board employees, or other state employees who work with the board in any capacity?

The requirements for eligibility to receive a payment under the Trust are very narrow and specifically tied to federal records documenting production of burley tobacco and quota ownership. This specific requirement and the fact that Trust funds are not received by the board greatly reduced the potential for conflict of interest.

12. Describe any items related to the board that require legislative attention and your proposed legislative changes.

We have no recommended changes at this time.

13. Should the board be continued? To what extent and in what ways would the absence of the board endanger the public health, safety or welfare?

Yes. In our opinion the board should be continued through its statutory termination date of June 30, 2014 or until the termination of the Trust. Although annual certification is not required at this time and payments are not being made by the Trust, there are legal and administrative issues that could arise that would necessitate action by the board. In

the unlikely event that funding for the Trust were to resume, the board would need to administer Tennessee's distribution plan.

14. Please list all board programs or activities that receive federal financial assistance and, therefore are required to comply with Title VI of the Civil Rights Act of 1964. Include the amount of federal funding received by program/activity.

None.

[Federal financial assistance includes:

- (1) Grants and loans of Federal funds,
- (2) The grant or donation of Federal Property and interests in property,
- (3) The detail of Federal personnel,
- (4) The sale and lease of, and the permission to use (on other than a casual or transient basis), Federal property or any interest in such property without consideration or at a nominal consideration, or at a consideration which is reduced for the purpose of assisting the recipient, or in recognition of the public interest to be served by such sale or lease to the recipient, and
- (5) Any federal agreement, arrangement, or other contract which has as one of its purposes the provision of assistance.

28 C.F.R. Sec. 42.102(c)

[The term recipient means any State, political subdivision of any State, or instrumentality of any State or political subdivision, any public or private agency, institution, or organization, or other entity, or any individual, in any State, to whom Federal financial assistance is extended, directly or through another recipient, for any program, including any successor, assign, or transferee thereof, but such term does not include any ultimate beneficiary under any such program.

28 C.F.R. Sec. 42.102(f)

If the board does receive federal assistance, please answer questions 15 through 22. If the board does not receive federal assistance, proceed directly to question 21.

15. Does your board prepare a Title VI plan? If yes, please provide a copy of the most recent plan.
16. Does your board have a Title VI coordinator? If yes, please provide the Title VI coordinator's name and phone number and a brief description of his/her duties. If not, provide the name and phone number of the person responsible for dealing with Title VI issues.

17. To which state or federal agency (if any) does your board report concerning Title VI?
Please describe the information your board submits to the state or federal government and/or provide a copy of the most recent report submitted.
18. Describe your board's actions to ensure that board staff and clients/program participants understand the requirements of Title VI.
19. Describe your board's actions to ensure it is meeting Title VI requirements. Specifically, describe any board monitoring or tracking activities related to Title VI, and how frequently these activities occur.
20. Please describe the board's procedures for handling Title VI complaints. Has your board received any Title VI-related complaints during the past two years? If yes, please describe each complaint, how each complaint was investigated, and how each complaint was resolved (or, if not yet resolved, the complaint's current status).
21. Please provide a breakdown of current board staff by title, ethnicity, and gender.

Staffing for the board is currently provided by the Tennessee Department of Agriculture in cooperation with the state Attorney General's Office.

John Sinclair, Dep. Atty. General, State Attorney General's Office (Caucasian/Male)

Theresa Denton, Legal Counsel, Tenn. Dept. of Agriculture (Caucasian/Female)

Tom Womack, Director of Public Affairs, Tenn. Dept. of Agriculture (Caucasian/Male)

Rose Wright, Executive Adm. Assistant, Tenn. Dept. of Agriculture (Caucasian/Female)

22. Please list all board contracts, detailing each contractor, the services provided, the amount of the contract, and the ethnicity of the contractor/business owner.

There are currently no contracts for services.